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that increases or decreases the number of partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) As otherwise determined by the Deputy Administrator, if the succession will not adversely affect nor defeat the purpose of the program.

(b) A succession in interest to the contract is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions set forth in § 1412.505; or

(2) Adversely affects or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to receive direct and counter-cyclical payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title; or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e)(1) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment shall not be paid to the successor unless payment has been refunded by the predecessor, or a debt for any amount not refunded to CCC has been established for the predecessor.

(2) A succession in interest shall not increase the liability of CCC.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 37939, June 26, 2003]

§ 1412.407 Planting flexibility.

(a) Any crop may be planted and harvested on base acreage on a farm, except as limited elsewhere in this section. Any crop may be planted on DCP

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cropland in excess of the base acreage on a farm.

(b) Base acreage may be hayed or grazed at any time.

(c) Harvesting non-perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, or designee, is prohibited on base acreage of a farm enrolled in a contract. Planting perennial fruits, vegetables (except lentils, mung beans, and dry peas) or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a contract.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables and wild rice may be planted on base acreage of a farm enrolled in a contract, and non-perennial fruits, vegetables and wild rice may be harvested on base acreage of a farm enrolled in a contract if:

(1) A producer double-crops fruits, vegetables or wild rice with a covered commodity or peanuts in any region described in paragraph (e) of this section, in which case direct and counter-cyclical payments will not be reduced for the planting or harvesting of the fruit, vegetable or wild rice;

(2) The farm has a history of planting fruits, vegetables, or wild rice, as determined by the CCC, in any one of the crop years 1991 through 1995 or 1998 through 2001, in which case the payment acres for the farm shall be reduced on an acre-for-acre basis; or

(3) The producer has a history of planting a specific fruit, specific vegetable or wild rice, as determined by CCC, the producer may plant and harvest the specific fruit, specific vegetable or wild rice for which the producer has a planting history, subject to the following:

(i) The acreage harvested shall not exceed the simple average of the sum of acreage of the specific fruit, specific vegetable or wild rice planted for harvest by the producer during the crop years 1991 through 1995 or 1998 through 2001, but not both, as determined by the producer, excluding any year in which the specific fruit, specific vegetable or wild rice was not planted; and

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(ii) The payment acres for the farm shall be reduced on an acre-for-acre basis;

(e) Double-cropping for purposes of this section means planting for harvest fruits, vegetables or wild rice on the same acres in cycle with a covered commodity or peanuts planted and harvested for grain or lint in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables or wild rice. State committees have established the following counties as regions within their respective States:

Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arkansas

Ashley, Benton, Clay, Crawford, Cross, Faulkner, Franklin, Independence, Jackson, Jefferson, Lee, Lincoln, Logan, Lonoke, Phillips, Pulaski, St. Francis, Sebastian, Woodruff, and Yell.

Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Pima, Pinal, and Yuma.

California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office

None.

Connecticut

None.

Colorado

None.

Delaware

Kent, New Castle, and Sussex.

Florida

All counties except Monroe.

Georgia

All counties.

Hawaii

None.

Idaho

None.

Illinois

Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolph, St. Clair, Tazewell, Union, Vermilion, White, and Whiteside.

Indiana

Allen, Bartholemew, Gibson, Hamilton, Jackson, Knox, LaGrange, Lake, LaPorte, Madison, Miami, Posey, Sullivan, Vandenberg, and Warrick.

Iowa

Kossuth, Mitchell, Palo Alto, and Winnebago.

Kansas

None.

Kentucky

Daviess.

Louisiana

Avoyelles, Franklin, Grant, Morehouse, Rapides, and West Carroll.

Maine

None.

Maryland

Baltimore, Calvert, Caroline, Carroll, Dorchester, Harford, Kent, Queen Annes, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts

None.

Michigan

None.

Minnesota

Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower,

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Nicollet, Olmsted, Redwood, Renville, Rice, Scott, Sibley, Steele, Waseca, Wabasha, Watonwan, and Winona.

Mississippi

Calhoun, Carroll, Coahoma, Covington, DeSoto, George, Humphreys, Jefferson Davis, Lowndes, Madison, Marshall, Monroe, Montgomery, Prentiss and Rankin.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

None.

New Jersey

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

New Hampshire

None.

New Mexico

Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Orange and Suffolk.

North Carolina

Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Tyrell, Union, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

None.

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Ohio

Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingham, Scioto, and Stark.

Oklahoma

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

Oregon

Benton, Clackamas, Columbia, Jackson, Josephine, Lane, Linn, Marion, Morrow, Multnomah, Polk, Umatilla, Washington, and Yamhill.

Pennsylvania

Adams, Bucks, Centre, Chester, Clinton, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Northumberland, Schuylkill, and York.

Puerto Rico

None.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Maury, Obion, Overton, Pickett, Rhea, Robertson, Rutherford, Sumner, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

Texas

Atascosa, Bailey, Baylor, Brooks, Camaron, Castro, Cochran, Cottle, Dallam, Dawson, Deaf Smith, Dimmit, Duval, Floyd, Foard, Frio, Gaines, Hale, Hartley, Haskell, Hidalgo, Hockley, Jim Wells, Kleberg, Knox, Lamb, LaSalle, Lubbock, Lynn, Maverick, Medina, Moore, Parmer, Presidio, San Patricio, Sherman, Starr, Swisher, Terry, Uvalde, Webb, Willacy, Wilson, Yoakum, and Zavala.

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Utah

None.

Vermont

None.

Virginia

Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

Washington

Yakima.

West Virginia

None.

Wisconsin

Adams, Calumet, Columbia, Dane, Dodge, Dunn, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Portage, Racine, Richland, Rock, St. Croix, Sauk, Walworth, Waukesha, Waushara, and Winnebago.

Wyoming

None.

(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity with lowest direct payment amount per acre until the acreage reduction amount is satisfied. Producers may agree to adjust the acre reduction between covered commodities on the farm, only to the extent the total acre reduction amount does not change for the farm, and all producers affected by the adjustment agree to the adjustment in writing.

(g) For the purposes of this part, fruits, vegetables and wild rice planted on base acreage of a farm under contract:

(1) Shall be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the fruit, vegetable or wild rice has been destroyed before harvest, as determined by the Deputy Administrator.

(2) Shall not be considered as planted to a fruit, vegetable or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by the Deputy Administrator, and a fee to cover the cost of a farm visit is paid by the producer, in accordance with part 718 of this title, to verify that the crop has not been harvested.

(h) Fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chickpeas/garbanzo beans, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dashen, dates, dry edible beans, dunga, eggplant, elderberries elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes,

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lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recaio, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

(i) For 2002 contracts only, fruits, vegetables, and wild rice may be planted on excess base acres. Such plantings shall:

(1) Not be a violation of the contract

(2) Result in a reduction of direct and counter-cyclical payments in accordance with paragraph (f) of this section.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 16184, Apr. 3, 2003; 68 FR 37939, June 26, 2003]

§ 1412.408 Redistributing base acreage.

(a)(1) Subject to the limitation in paragraph (a)(3) of this section, the redistribution of a farm's base acreage shall be allowed when all owners of the farm execute and submit a written request on a CCC-approved form for such redistribution to the FSA county office where the records for the farm are administratively maintained.

(2) If the land of the farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the redistribution of base acreage.

(3) Redistribution of a farm's base acreage to negate or reduce a program violation is prohibited.

[68 FR 37939, June 26, 2003]

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Subpart E—Financial Considerations Including Sharing Direct and Counter-Cyclical Payments

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

§ 1412.501 Limitation of direct and counter-cyclical payments.

(a) The sum total of all annual direct payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(b) The sum total of all annual counter-cyclical payment amounts shall not exceed the amounts specified in part 1400 of this chapter.

(c) The amount of 2002 direct and counter-cyclical payments for a farm shall not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 13, 2002.

(d) The provisions of part 1400 of this chapter apply to this part.

§ 1412.502 Direct payment provisions.

(a) For 2003 through 2007 contracts, a final direct payment shall be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) At the option of the producer, direct payments for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established, shall be paid in any month from December through September of the fiscal year of the contract, as requested by the producer as an advance payment based on 50 percent of the direct payment rate for 2003 through 2005 contracts, 40 percent of the direct payment rate for 2006 contracts, and 22 percent of the direct payment rate for 2007 contracts. For any producer to receive an advance direct payment, all producers sharing in the direct payments for the farm must: